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MATTHEW CIVITANO

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

MATTHEW CIVITANO,)	Case No.: '11CV2761 BTM JMA
)	
Plaintiffs,)	COMPLAINT AND DEMAND FOR
)	JURY TRIAL
v.)	
)	(Unlawful Debt Collection Practices)
GC SERVICES, LP,)	
)	
Defendant.)	

VERIFIED COMPLAINT

MATTHEW CIVITANO (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the following against GC SERVICES, LP (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (FDCPA).
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. 1367 grants this court supplemental jurisdiction over the state claims contained therein.

1 4. Defendant conducts business in the state of California, and therefore, personal
2 jurisdiction is established.

3 5. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.

4 **PARTIES**

5 6. Plaintiff is a natural person residing in San Diego, San Diego County, California.

6 7. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)*, and according to
7 Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)*
8 and *Cal. Civ. Code § 1788.2(h)*.

9 8. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)* and *Cal. Civ.*
10 *Code §1788.2(c)*, and sought to collect a consumer debt from Plaintiff.

11 9. Defendant is a national company with offices in Houston, Texas.

12 10. Defendant acted through its agents, employees, officers, members, directors, heirs,
13 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
14 insurers.

15 **FACTUAL ALLEGATIONS**

16 11. Beginning in October 2011, Defendant began placing collection calls to Plaintiff seeking
17 and demanding payment of an alleged debt owed for a repossessed vehicle.

18 12. Defendant calls Plaintiff at (914) 403-2045 from (210) 366-4397.

19 13. On October 20, 2011, Plaintiff spoke with Defendant's agent disputing the alleged debt.

20 14. During that same conversation, Plaintiff informed Defendant's agent that he now resides
21 in California.

22 15. On October 21, 2011, Defendant left a voicemail for Plaintiff without meaningfully
23 disclosing the identity of its company and that it is a debt collector. (See Exhibit A).

24 16. On October 31, 2011, Defendant called Plaintiff at 5:26 AM PST and again at 1:16 PM
25 PST. (See Exhibit B).

1 17. On November 2, 2011, Defendant called Plaintiff at 5:34 AM. (See Exhibit B).

2 18. During that call, Defendant left a voicemail again without meaningfully disclosing the
3 identity of its company and that it is a debt collector. (See Exhibit A).

4 19. On November 9, 2011, Defendant called Plaintiff at 5:09 AM PST and left a voicemail
5 to call back (800) 431-7358. (See Exhibit B).

6 20. On November 10, 2011, Defendant called Plaintiff at 6:35 AM PST. (See Exhibit B).

7 21. During that call, Defendant again left a voicemail again without meaningfully disclosing
8 the identity of its company and that it is a debt collector. (See Exhibit A).

9 **COUNT I**
10 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

11 22. Defendant violated the FDCPA based on the following:

- 12 a. Defendant violated §1692c(a)(1) of the FDCPA by calling Plaintiff before 8AM.
13 b. Defendant violated §1692d of the FDCPA by engaging in conduct the natural
14 consequence of which is to abuse and harass Plaintiff.
15 c. Defendant violated §1692d(6) of the FDCPA by placing calls to Plaintiff without
16 meaningfully disclosing its identity.
17 d. Defendant violated §1692e(11) of the FDCPA by failing to provide the requisite
18 warnings in its communications with Plaintiff, to wit: "This is an attempt to
19 collect a debt. This communication is from a debt collector."

20 WHEREFORE, Plaintiff, MATTHEW CIVITANO, respectfully requests judgment be
21 entered against Defendant, GC SERVICES, LP, for the following:

22 23. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15
23 *U.S.C. 1692k*,

24 24. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act,
25 *15 U.S.C. 1692k*

25 25. Any other relief that this Honorable Court deems appropriate.

COUNT II
DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT

26. Plaintiff repeats and re-alleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

27. Defendant violated the RFDCPA based on the following:

- a. Defendant violated the §1788.11 of the RFDCPA by not meaningfully disclosing its identity;
- b. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 *et seq.* to wit: Sections 1692c, 1692d and 1692e.

WHEREFORE, MATTHEW CIVITANO, respectfully requests judgment be entered against Defendant, GC SERVICES, LP, for the following:

28. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788.30(b)*,

29. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ Code § 1788.30(c)*, and

30. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, MATTHEW CIVITANO, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: November 28, 2011

KROHN & MOSS, LTD.

By: /s/Nicholas J. Bontrager
Nicholas J. Bontrager
Attorney for Plaintiff

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF CALIFORNIA

Plaintiff, MATTHEW CIVITANO, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.

Pursuant to 28 U.S.C. § 1746(2), I, MATTHEW CIVITANO, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: 11/14/2011


MATTHEW CIVITANO

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MATTHEW CIVITANO,

(b) County of Residence of First Listed Plaintiff San Diego (CA)

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Krohn & Moss, Ltd. Nicholas J. Bontrager (323) 988-2400
10474 Santa Monica Blvd., Suite 401 Los Angeles, CA 90025

DEFENDANTS

GC SERVICES, LP,

County of Residence of First Listed Defendant Houston (TX)

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

'11CV2761 BTM JMA

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et seq.Brief description of cause:
Unlawful and abusive debt collection practices**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/28/2011

/s/Nicholas J. Bontrager

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____